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October 15, 2021

Via ECF

The Honorable John G. Koeltl
United States District Judge
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *Roche Cyrulnik Freedman LLP v. Jason Cyrulnik*, No. 1:21-cv-1746 (S.D.N.Y.)

Dear Judge Koeltl:

We represent Plaintiff Roche Freedman LLP (“RF”) in this matter and write to respectfully submit (i) Order, *Kyle Roche et al. v. Jason Cyrulnik*, Case No. 3D21-1741 (Fla. 3d DCA Sept. 22, 2021), attached as Exhibit A, (ii) Response to Petition for Writ of Certiorari, *Kyle Roche et al. v. Jason Cyrulnik*, Case No. 3D21-1741 (Fla. 3d DCA Oct. 1, 2021), attached as Exhibit B, as supplemental authority in opposition to Defendant Jason Cyrulnik’s motion to dismiss. (See Dkt. Nos. 36-41.)

As described in RF’s opposition to Cyrulnik’s motion to dismiss (*see* Dkt. Nos. 48-51), after RF filed this action (the “First Action”), Cyrulnik commenced a separate action in Florida state court, *Jason Cyrulnik v. Kyle Roche et al.*, Case No. 2021-005837-CA-01 (Fla. 11th Cir. Ct.) (the “Florida Action”). RF asked the Florida trial court to stay the Florida Action, but that request was denied, and RF appealed that denial (the “Appeal”). (*See* Dkt. No. 50 ¶ 5.) RF then asked the trial court to stay its case pending resolution of the Appeal, but the trial court denied that motion as well. (*See id.* ¶ 8.) On September 10, 2021, RF appealed the denial of its motion to stay pending resolution of the Appeal.

On September 22, 2021, Florida’s Third District Court of Appeal entered an order staying the Florida Action pending resolution of the Appeal. (Ex. A, Order, *Kyle Roche et al. v. Jason Cyrulnik*, Case No. 3D21-1741 (Fla. 3d DCA Sept. 22, 2021).)

The fact that the Florida Action is now stayed provides an additional basis for rejecting Cyrulnik’s argument that the Court should abstain from exercising jurisdiction over the First

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2

Action pursuant to *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976). Indeed, where “the state court action is presently stayed,” “[s]taying the federal action would, at least temporarily, preclude the plaintiff from proceeding in either forum on any claim for relief.” *Vladimir v. Cowperthwait*, 2007 WL 1964157, at *2 (S.D.N.Y. July 3, 2007) (rejecting *Colorado River* argument).

Remarkably, after Cyrulnik asked this Court to dismiss and/or stay its case because allowing both actions to proceed simultaneously *would* create “the risk of inconsistent outcomes and judgments” (Dkt. No. 40 at 21.), Cyrulnik said exactly the opposite to the Third District Court of Appeal. Specifically, on September 30, 2021, Cyrulnik filed his opposition to the Appeal. In his opposition, Cyrulnik tells the Florida appellate court that “there is *no risk* of inconsistent rulings” if the First Action and Florida Action were to proceed simultaneously. (Ex. B, Response to Petition for Writ of Certiorari at 32, *Kyle Roche et al. v. Jason Cyrulnik*, Case No. 3D21-1741 (Fla. 3d DCA Oct. 1, 2021) (emphasis added)).

Respectfully,



Sean Hecker